

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1154 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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SIDIBHAI RANABHAI VANSI & 1 - Petitioner(s)

Versus

SPL. RECOVERY OFFICER & 1 - Respondent(s)

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Appearance :

MR PJ KANABAR for Petitioner(s) : 1 - 2.

MR SHAKTISINH GOHIL for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/02/2006

ORAL JUDGMENT

Heard learned Advocates appearing for the parties.

2. Rule. Mr.Shaktisinh Gohil waives service of Rule on behalf of the respondents. The petition is taken up for final hearing and disposal today, as notice for final disposal had already been issued.

3. This petition under Article 227 of the Constitution of India is moved, challenging three different orders: (i) order dated 6.12.2004 made below Exh.1; (ii) order dated 6.12.2004 made below Exhs.166, 172 and 175; and (iii) order dated 11.2.2004 made below Exh.162 in Regular Civil Suit No. 84 of 1993.

4. At the outset, the learned Advocate for the petitioner, Mr.P.J.Kanabar seeks permission, under instruction, not to press the relief sought against the latter two orders, viz. Order

dated 6.12.2004 made below Exhs. 166, 172 and 175 and order dated 11.2.2004 made below Exh.162 in Regular Civil Suit No.84 of 1993. Permission granted.

5. That leaves for decision only with regard to order dated 6.12.2004 made below Exh.21. The petitioner has filed Regular Civil Suit No.84 of 1993 challenging the proceedings undertaken by the Special Recovery Officer and in the process, it appears that, paid Court Fee Stamp of Rs.30/- only. However, the trial Court while hearing the parties on application Exhs.166, 172 and 175 for production of evidence, came to a prima facie conclusion that the subject matter of the suit would be Rs.21,140/- and accordingly, in light of provisions of the Bombay Court Fees Act, 1959, a separate order was required to be made. This order was made on 6.12.2004 below Exh.1. On going through the said order, it is apparent that the trial Court made the order on the same day when

it rejected the application Exhs.166, 172 and 177 for production of evidence. That apparently shows that no opportunity of hearing was granted to either side, more particularly the plaintiff.

6. In these circumstances, the impugned order dated 6.12.2004 made below Exh.1 in relation to the direction to pay deficit Court Fees of Rs.1510/- is quashed and set aside and the issue on this limited count is restored to file of the trial Court. The trial Court shall pass an appropriate order in accordance with law after hearing both the sides on this issue.

7. In light of the fact that the other reliefs prayed for are not pressed, this petition is partly allowed to the aforesaid extent and stands disposed of accordingly. Rule is made absolute to the above extent.

(D.A.Mehta, J.)

Sreeram.